IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.MC.No. 1885 of 2007()

CRRP.19/2006 of SESSIONS COURT, ERNAKULAM
MC.19/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONER: REVISION PETITIONER/COUNTER PETITIONER

C.A.SAIDU MOHAMMED, AGED 41,
S/O.ABDUL RAHMAN,RESIDING AT CHENDARA HOUSE,
MALAYANKDU, THOTTUMUGHAM P.O.,
ALUVA,(EAST) VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.K.T.SHYAMKUMAR

RESPONDENTS: RESPONDENTS/RESPONDENTS

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1. NASEEMA, AGED 35,D/O.AIMU,
RESIDING AT CHIRAYIL HOUSE,EDATHALA P.O.,ALUVA
(EAST) VILLAGE, ERNAKULAM DISTRICT.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1885 of 2007

Dated this the 12th day of June, 2007

ORDER

Petitioner is aggrieved by an order passed against him under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The courts below have concurrently directed the petitioner to pay an amount of Rs.80,500/- as shown below:

i)	Maintenance during the period of idath : 3 months X Rs.1,000/-	= Rs.3,000/-
ii)	Fair and reasonable provisions (ie. Rs.1,000/- X 12 months for 5 years)	= Rs.60,000/-
iii)	Value of gold ornaments	= Rs.17,500/-

	Total	= Rs.80,500/-

2. Marriage is admitted. Divorce is admitted. Liability to pay amounts is not seriously disputed. The claimant/divorced wife and the petitioner/divorced husband tendered evidence in support of their respective versions. Trial Court as well as the Court of Revision came to the conclusion that the above said amounts are payable to the claimant wife. The petitioner and the claimant/wife had lived in matrimony from 07.01.1989 to 11.04.2005. Three children were born in the wedlock. They are, without any dispute, now in the custody of the petitioner. At the time of divorce, the petitioner was aged 40

years and the divorced wife was aged 33 years. There is no contention that remarriage of the claimant/divorced wife has taken place so far. The petitioner admittedly has remarried.

3. A second revision is not maintainable in view of Section 397(3) Cr.P.C and that explains why the petitioner has come into this Court through the door of Section 482 Cr.P.C. The learned counsel for the petitioner prays that the extraordinary inherent jurisdiction vested in this Court under Section 482 Cr.P.C may be invoked to set aside or modify the impugned concurrent direction.

4. What are the reasons ? The learned counsel for the petitioner first of all contends that the petitioner is looking after the 3 children born in the wedlock including infant minor children. In these circumstances, the quantum of amount directed to be paid is excessive. Counsel prays that instalment facility may be permitted to be given to the petitioner to discharge the liability. At least some further time may be ordered to be given to the petitioner to discharge the liability. The quantum of amounts fixed may be reduced, it is further prayed.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction available to this Court under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked is an extraordinary inherent jurisdiction. The same cannot be invoked as a

matter of course such jurisdiction is to be invoked sparingly and in exceptional cases in aid of justice. Has justice failed ? Is there miscarriage of justice or abuse of process of the court ? These are the considerations of this Court while considering a prayer for invocation of the extraordinary inherent jurisdiction.

6. I find absolutely no acceptable reason to invoke such jurisdiction to interfere with the concurrent findings of facts. Considering the length of the marriage, the age of the spouses at the time of divorce, the fact that 3 children were born in the wedlock, that they are now under the care and custody of the petitioner, the totality of inputs does not at all persuade me to come to the conclusion that the impugned order which has become final and beyond challenge under the Code in view of Section 397(3) Cr.P.C deserves or warrants invocation of the jurisdiction under Section 482 Cr.P.C.

7. The multiplicand to ascertain the maintenance payable during the period of iddath and the fair and reasonable provision have been reckoned by the court below at Rs.1,000/- per mensem. The petitioner claims to be a painter by profession. He is alleged to be a headload worker. Be that as it may, notwithstanding the said controversy, the multiplicand of Rs.1,000/- per mensem adopted by the courts below does appear to me to be absolutely reasonable.

8. The challenge raised in these circumstances must inevitably fail. The learned counsel for the petitioner submits that if some further time were not granted to the petitioner to make the payment, he will inevitably have to go to prison on 16.06.2007, to which date the case stands posted. It is for the petitioner to satisfy the learned Magistrate about his bona fides by making a substantial payment and then seek extension of time. I have no reason to assume that the learned Magistrate would not consider such request in accordance with law, with sympathy and expeditiously. Every court must do the same.

9. This Crl.M.C is dismissed with the above observations. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-